

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WALTER PEREZ,

Plaintiff,

- against -

PAUL SMITH and BARCLAY WATER
MANAGEMENT, INC., et al.,

Defendants.
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6/3/19
Adopted without
objection or modification.
The case is remanded to
Supreme Court, Kings County.
Click to enter
judgment.
REPORT AND
RECOMMENDATION
19-CV-2085 (RJD)
So ordered
s/Raymond J. Dearie
RJD

ROANNE L. MANN, CHIEF UNITED STATES MAGISTRATE JUDGE:

Defendants Paul Smith and Barclay Water Management, Inc. ("defendants") removed this personal injury action to this Court on April 16, 2019, on the ground that the parties are citizens of different states and the amount in controversy exceeds \$75,000. Under 28 U.S.C. § 1447(c), a federal court may *sua sponte* remand an action at any time for a lack of subject matter jurisdiction.

See Mitskovski v. Buffalo & Fort Erie Pub. Bridge Auth., 435 F.3d 127, 133 (2d Cir. 2006);

Hamilton v. Aetna Life & Cas. Co., 5 F.3d 642, 643-44 (2d Cir. 1993); 28 U.S.C. § 1447(c).

The party seeking removal to federal court bears the burden of establishing that the requirements for diversity jurisdiction have been met. See Mehlenbacher v. Akzo Nobel Salt, Inc., 216 F.3d 291, 296 (2d Cir. 2000). The amount in controversy is evaluated "on the basis of the pleadings, viewed at the time when defendant files the notice of removal." Wurtz v. Rawlings Co., LLC, 761 F.3d 232, 239 (2d Cir. 2014).

In the instant action, the Complaint served on defendants does not contain an *ad damnum* and defendants' Notice of Removal provides no basis for the allegation that the amount in controversy exceeds \$75,000. The Complaint's allegation that plaintiff "suffer[ed] severe and serious personal injuries" is insufficient to sustain defendants' burden of showing that the \$75,000